APPENDIX A—ORDER OF APPELLATE DIVISION

No. 3260

In the Matter of Robert R. Kaufman, petitioner, v. James R. Dumpson, Administrator of the Human Resources Administration of the City of New York, respondent.

Motion by petitioner for reargument, reconsideration and renewal of proceeding which was dismissed by order of this court dated September 19, 1974 and upon said reargument and reconsideration, to recall and vacate said order which confirmed respondent's determination.

Motion denied.

LATHAM, Acting P.J., COHALAN, BRENNAN and SHAPIRO, JJ., concur.

August 4, 1975 No. 191 Enl.T.

IN RE KAUFMAN v DUMPSON No. 3260

APPENDIX B—ORDER DENYING REARGUMENT

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the FOURTH day of June A.D. 1975.

PRESENT, HON. CHARLES D. BREITEL, *Chief Judge, presiding.*

Mo. No. 407
In the Matter of
the Application of Robert R.
Kaufman,
Appellant,
vs.
James R. Dumpson, Administrator of the
Human Resources Administration of the City
of New York,
Respondent.

A motion for reargument of a motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

s/ Joseph W. Bellacosa
Clerk of the Court.

APPENDIX C—ORDER DENYING LEAVE TO APPEAL

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the nineteenth day of March A.D. 1975.

PRESENT, HON. CHARLES D. BREITEL, *Chief Judge, presiding.*

(Same Title)

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied with twenty dollars costs and necessary reproduction disbursements.

s/ Joseph W. Bellacosa
Clerk

APPENDIX D—ORDER DISMISSING APPEAL

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twentieth day of January A.D. 1975.

PRESENT, HON. CHARLES D. BREITEL, *Chief Judge, presiding.*

(Same Title)

A motion having heretofore been made herein upon the part of the respondent to dismiss the appeal taken by the appellant in the above cause to this Court and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted and the appeal dismissed, without costs, upon the ground that no substantial constitutional question is directly involved.

s/ James N. Flavin
Acting Clerk

APPENDIX E—ORDER DENYING PREFERENCE

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twentieth day of January A.D. 1975.

PRESENT, HON. CHARLES D. BREITEL, *Chief Judge, presiding.*

(Same Title)

A cross-motion for a preference in the above cause having been made upon the part of appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said cross-motion be and the same hereby is dismissed as academic.

s/ James N. Flavin
Acting Clerk

APPENDIX F—ORDER OF APPELLATE DIVISION DISMISSING PROCEEDING

At a term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on September 19, 1974.

HON. HENRY J. LATHAM, Acting Presiding Justice,
HON. J. IRWIN SHAPIRO,
HON. JOHN P. COHALAN, JR., *Associate Justices*
HON. ARTHUR D. BRENNAN
HON. A. DAVID BENJAMIN

(Same Title)

The above named Robert R. Kaufman, petitioner, having instituted this proceeding pursuant to article 78 of the CPLR, by a petition verified March 16, 1974, to review a determination of the respondent, dated March 6, 1974; the respondent having filed an answer thereto; by order of the Supreme Court, Kings County, dated May 1, 1974, the proceeding was transferred to this court for determination; and the proceeding having been submitted by Robert R. Kaufman, petitioner in person, and submitted by Ellen Kramer Sawyer, Esq., of counsel for the respondent; due deliberation having been had thereon; and upon this court's decision slip heretofore filed and made a part hereof; it is unanimously

ORDERED that the proceeding is hereby dismissed on the merits and respondent's determination confirmed, without costs.

Enter:

IRVING N. SELKIN
Clerk of the Appellate Division.

APPENDIX G - Excerpts from Sections 75 and 76 of the Civil Service Law

HUMAN RESOURCES ADMINISTRATION
Employee Discipline Division

SECTIONS 75 AND 76
OF THE CIVIL SERVICE LAW

Section 75. Removal and Other Disciplinary Action

1. Removal and other disciplinary action. A person described in paragraph (a), or paragraph (b), or paragraph (c), or paragraph (d) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hering upon stated charges pursuant to this section.

(a) A person holding a position by permanent appointment in the competitive class of classified civil service, or

(b) a person holding a position by permanent appointment or employment in the classified service of the state or in the several cities, counties, towns, or villages thereof, or in any other political or civil division of the state or of a municipality, or in the public school service, or in any public or special district, or in the service of any authority, commission or board, or in any other branch of public service, who is an honorable discharged member of the armed forces of the United States having served therein as such member in time of war as defined in section eighty-five of this chapter, or who is an exempt volunteer fireman as defined in the general municipal law, except when a person described in this paragraph holds the position of private secretary, cashier or deputy of any official or department, or

(c) an employee in the state service holding a position in the non-competitive class other than a position designated in the rules of the state civil service commission as confidential or requiring the performance of functions influencing policy, who since his last entry into the state service has completed at least five years of continuous service in the non-competitive

class in a position or positions not so designated in the rules as confidential or requiring the performance of functions influencing policy, or

* * * * * 2. Procedure. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons thereof, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such office or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, and shall allow him to summon witnesses in his behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required.

* * * * *

4 Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than three years after the occurrence of the alleged incompetency or misconduct complained of and described in the charges provided, however, that such limitation shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.

Sec. 76. Appeals from Determinations in Disciplinary Proceedings

1. Appeals. Any officer or employee believing himself aggrieved by a penalty or punishment of demotion in or dismissal from the service, or suspension without pay, or a fine, imposed pursuant to the provisions of section seventy-five of

this chapter, may appeal from such determination either by an application to the state or municipal commission having jurisdiction, or by an application to the court in accordance with the provisions of article seventy-eight of the civil practice law and rules. If such person elects to appeal to such civil service commission, he shall file such appeal in writing within twenty days after service of written notice of the determination to be reviewed, such written notice to be delivered personally or by registered mail to the last known address of such person and when notice is given by registered mail, such person shall be allowed an additional three days in which to file such appeal.

2. Procedure on appeal. Where appeal is taken to the state or municipal commission having jurisdiction, such commission shall review the record of the disciplinary proceeding and the transcript of the hearing, and shall determine such appeal on the basis of such record and transcript and such oral or written argument as the commission may determine. The commission may direct that such appeal shall be heard by one or more members of the commission or by a person or persons designated by the commission to hear such appeal on its behalf, who shall report thereon with recommendations to the commission. Upon such appeal the commission shall permit the employee to be represented by counsel.

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